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IN THE

Supreme Court of the United States

No. 355 November Term, 1940

JOHN PAINTER,
Petitioner,

vs.

BALTIMORE AND OHIO RAILROAD COMPANY,
Respondent.

Petition for Writ of Certiorari, Brief in Support Thereof, and Notice of Presentation

J. THOMAS HOFFMAN,
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GEORGE V. MOORE,
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PITTSBURGH PRINTING COMPANY
PITTSBURGH, PA.

IN THE

Supreme Court of the United States

No. **November Term, 1940**

JOHN PAINTER,
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BALTIMORE AND OHIO RAILROAD COMPANY,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Pennsylvania

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PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, John Painter, respectfully prays for a writ of certiorari herein to review a certain final decision of the Supreme Court of the Commonwealth of Pennsylvania, being the highest Court of said State, in the above entitled action, the opinion and decision of said Court having been rendered and filed May 20, 1940, by which decision the said Court held that a railroad employee was at the time he sustained serious personal injuries while engaged in moving and replacing a frame shanty in the terminal yard, which building contained flags, fuzees, lanterns, torpedoes and other signalling equipment used by the carrier in the operation of its trains, both interstate and intrastate, was not engaged in

interstate transportation. The structure was in continuous use during its removal and replacement, and trainmen obtained therefrom such signalling devices as they required upon the departure of trains, and the building was occupied at the time of the injury by an employee of the defendant engaged in filling, trimming and cleaning lanterns. The Court held the plaintiff was not engaged in interstate transportation within the purview of the Federal Employers' Liability Act of April 22, 1908, Chapter 149, 35 Stat. 65, and Amendments thereto, including the Amendment of August 11, 1939 Ch. 685, Sec. 1, 53 Stat. 1404 which places a legislative construction as to which employes are within the purview of the Act, and your Honorable Court has not determined its effect by judicial construction.

SECOND

Your petitioner, after assisting in moving the shanty across the tracks, the highway of interstate transportation, was placing a sill under the shanty, which was elevated on four railroad track jacks, one at each corner, when a jack slipped, causing the building to fall and crush his hand, necessitating partial amputation and resulting in permanent loss of use of the hand. He was the carpenter at the Pittsburgh Passenger Terminal, and his duties consisted, inter alia, of keeping in repair turntables and steam boxes in use in the yards.

THIRD

At the time the petitioner was injured, March 6, 1928, and at the time suit was brought, March 1, 1930, under the decisions of your Honorable Court the plaintiff was definitely engaged in interstate commerce, and therefore did not file a claim for Workmen's Compensation within the

year allowed by the Workmen's Compensation Act, for the reason that it would have been a vain gesture.

FOURTH

Had the petitioner failed to keep the shanty on an even keel, and it had fallen so as to block the entrance, and the trainmen would be unable to secure safety and signalling equipment promptly, it would have impeded the movement of interstate commerce, or have halted it altogether.

FIFTH

Your petitioner avers that the reason why the writ of certiorari should be issued is that this case involves a question which is of great public interest which should be determined by the Court of last resort: Where is the line of demarcation between employment in interstate commerce or transportation and intrastate, and what judicial construction should be placed upon the Amendment of August 11, 1939? Does its pronouncement as to which employes are engaged in interstate commerce within the purview of the act construe the original act from the date of its enactment and supersede the judicial constructions made in the interim or does it construe the original act only from the date of the Amendment?

Wherefore your petitioner prays that a writ of certiorari be issued under the seal of this Court, directed to the Supreme Court of Pennsylvania for the Western District, and to the Clerk thereof, commanding the said court and the said clerk to certify to this Court on a day to be designated, a full and complete transcript of the record and all proceedings of the said Supreme Court of Pennsylvania in the said cause, to the end that the said cause may be reviewed and determined by this Honorable Court as provided by law, and that the said judgment of the said

Supreme Court of Pennsylvania shall be reversed by this Honorable Court, and that the petitioner have such further relief as may seem proper. And your petitioner will ever pray.

J. THOMAS HOFFMAN,
SAMUEL J. GOLDSTEIN,
GEORGE V. MOORE,
HARRY MEIZLIK,
Attorneys for Petitioner.

Affidavit

STATE OF PENNSYLVANIA }
COUNTY OF ALLEGHENY } *ss:*

Before me, the undersigned authority in and for the County and State aforesaid, personally appeared SAMUEL J. GOLDSTEIN, who being first duly sworn, deposes and says that he is one of the attorneys for the petitioner herein, that he has read the foregoing petition, and knows the contents thereof, that the matters therein are true of his own knowledge, and that in his best judgment and opinion the matter set forth in the said petition are fully supported in the transcript of the record filed herein.

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Sworn to and subscribed before me this.....
day of August, 1940.
(SEAL)

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Notary Public in and for Allegheny County,
Pennsylvania.

My commission expires.....